In the High Court of Judicature at Madras

Dated: 19/03/2003

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The Hon'ble Mr.Justice P.D.DINAKARAN

W.P.No.10027 OF 1997

K.J.Arul .. Petitioner

-Vs-

1. Tamil Nadu Electricity Board
rep. By its Chairman
Anna Salai, Nandanam,
Chennai.

2. The Divisional Engineer
Tamil Nadu Electricity Board
Ponneri Taluk, M.G.R.District. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of writ of Mandamus as stated therein.

For Petitioner : Mr.V.Prakash

For Respondents : Mr.G.Vasudevan

:ORDER

Heard.

2. Mr.V.Prakash, learned counsel appearing for the petitioner inviting my attention to the averments of the petitioner in the affidavit filed in support of the above writ petition, that the petitioner suffered severe burn injuries on the back of his neck, chest, stomach, waist, on both legs and on his face, got his hairs burnt and also suffered from bleeding profusely due to the injuries and experienced deep and unbearable pain by electrocution, due to the improper maintenance of live high tension electrical wire at Kilikodi Village, Ponneri Taluk, within the jurisdiction of the second respondent, seeks a writ of Mandamus to direct the respondents to pay the petitioner a sum of Rupees Ten Lakhs as compensation towards the electrocution injuries suffered by the petitioner.

3. Mr.V.Prakash, learned counsel for the petitioner placed strong reliance on the observation of the Apex Court in TAMIL NADU ELECTRICITY BOARD Vs. SUMATHI reported in AIR 2000 SC 1603, wherein the Apex Court has held that when there is negligence on the face of it and infringement of Article 21

of the Constitution of India is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution of India, and right of life is one of the basic human rights guaranteed under Article 21 of the Constitution of India.

4. Yet another decision relied upon by Mr.V.Prakash, learned counsel for the petitioner is M.P.ELECTRICITY BOARD Vs. SHAIL KUMARI & OTHERS reported in (2002) 2 SCC 162, wherein it was observed that if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted, and the authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps and any failure to comply with such extra duty would render the authorities tortiously liable to pay damages.

5. Per contra, Mr.G.Vasudevan, learned counsel for the respondents, placing reliance on the decision of the Apex Court in CHAIRMAN, GRID CORPORATION OF ORISSA LTD. Vs. SUKAMANI DAS reported in AIR 1999 SC 3 412, submits that it may not be proper to exercise the power under Article 226 of the Constitution of India for awarding compensation claimed for the negligent and tortious liability, where disputed questions of facts are involved.

6. I have given careful consideration to the submissions of both sides.

7. It is true, Mr.V.Prakash, learned counsel for the petitioner invited my attention to paragraph 4 of the affidavit, explaining the injuries sustained due to electrocution. The learned counsel also brought to my notice the lawyer's notice issued on behalf of the petitioner on 28.2.1997 narrating the incidents said to have taken place on 17.8.1986 and claiming the compensation of Rupees Two Lakhs, and argued that as no reply was given by the respondent/Board to the said lawyer's notice dated 28.2.1997, the facts that lead to the claim stand undisputed.

8. In this regard, the reply by the respondent/Board in their counter affidavit is to the effect that neither the petitioner nor any local persons of Kilikodi Village, Ponneri Taluk gave any complaint to the respondent/Board, nor any police complaint was registered immediately after the alleged occurrence on 17.8.1986. That apart, the respondent/Board denying the averments stated in paragraph 4 of the affidavit filed in support of the petition contends that the respondent/ Board was not at all aware of the occurrence said to have taken place on 17.8.1986. It was also contended that the occurrence would have taken place only due to the carelessness and negligence of the petitioner for having got in contact with live high tension electric wire when he was said to have been watching the operation of the harvestor vehicle.

9. Concededly, TAMIL NADU ELECTRICITY BOARD Vs. SUMATHI case, referred supra, also arouse from the decision of this Court appointing an Arbitrator by exercising the power under Article 226 of the Constitution of

India and awarding compensation towards the death caused by electrocution in view of the improper maintenance of electric live wire by the Tamil Nadu Electricity Board, the respondents therein. Even though the claimants therein strongly relied upon the decision of the Apex Court in SHAKUNTALA DEVI Vs. DELHI ELECTRIC SUPPLY UNDERTAKING reported in 1995 AIR SCW 1436 = (1995) 2 SCC 369, as well as the decision in CHAIRMAN, GRID CORPORATION OF ORISSA LTD. Vs. SUKAMANI DAS case, referred supra, relied upon by the learned counsel for the respondents herein, the Apex Court in TAMIL NADU ELECTRICITY BOARD Vs. SUMATHI case, referred supra, made it clear that in a disputed case, it may not proper for the High Court to exercise the power under Article 226 of the Constitution of India either to appoint an Arbitrator, or to decide the quantum of compensation, or to award the same, for the death caused by electrocution due to improper maintenance of electric wires or equipment.

10. It is true, the Apex Court in SHAKUNTALA DEVI Vs. DELHI ELECTRIC SUPPLY UNDERTAKING case, referred supra, on the facts and circumstances of the case therein, exercising the powers conferred on the Apex Court under Article 142 of the Constitution of India entertained the claim made by petitioner therein on the death of her husband, who got electrocuted due to the improper maintenance of live wire of electricity. The facts in the said case, referred supra, in short, are to the effect that a live main electricity cable/wire which was resting on an electricity pole had got snapped and was lying in the rainy and waterlogged village; various complaints were made by the residents of the village to the officers of the respondent, which was statutorily bound to maintain electrical installation lines in proper conditions; the deceased was not aware of the electricity leakage and when he came in contact with the live cable he got electrocuted on the spot and died instantaneously. According to Shakuntala Devi, the claimant therein, this was on account of criminal negligence on the part of the respondent. The Court observed that as the disaster had left the petitioner and her young children destitute, the present petition was moved under Article 32 of the Constitution of India presumably relying upon petitioner's fundamental rights under Article 21 of the Constitution of India which had got adversely affected on account of the negligent act of the officials of respondent. It was under such circumstances, the Apex Court, satisfied with the said undisputed facts of the case, held that it was a fit case to exercise its jurisdiction under Article 142 of the Constitution of India and granted relief to Sakuntala Devi, the petitioner therein.

11. In a case of disputed facts, namely, CHAIRMAN, GRID CORPORATION OF ORISSA LTD. Vs. SUKAMANI DAS, referred supra, as relied upon by the learned counsel for the respondent, the Apex Court held as follows:

"High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 2 26 of the Constitution. The High Court went wring in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of electric transmission lies of the appellants, that admittedly/ prima facie amounted to negligence on the part of the appellants. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established

firstly by the claimants. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petitioner under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court."

12. Thereafter, when a decision of this Court dated 12.3.1997 in W. P.No.545 of 1996 and W.M.P.No.910 of 1996, appointing an Arbitrator and awarding compensation to one Sumathi, who complained against the negligence of the Tamil Nadu Electricity Board, came for consideration of the Apex Court, on appeal, in TAMIL NADU ELECTRICITY BOARD Vs. SUMATHI case, referred supra, the Apex Court distinguished the facts in SHAKUNTALA DEVI Vs. DELHI ELECTRIC SUPPLY UNDERTAKING case and TAMIL NADU ELECTRICITY BOARD Vs. SUMATHI case, referred supra, to the effect that in the earlier case the claim relates to undisputed facts and in the latter case the claim relates to disputed facts.

13. Therefore, the law is now settled that even though the Court by exercising the powers conferred under Article 226 of the Constitution of India can consider the grievance of the citizens when their right to liberty conferred under Article 21 of the Constitution of India is complained based on undisputed facts, it may not be proper to exercise such power under Article 226 of the Constitution of India in a case of disputed facts as per the ratio laid down in (i) TAMIL NADU ELECTRICITY BOARD Vs. SUMATHI case; and (ii) CHAIRMAN, GRID CORPORATION OF ORISSA LTD. Vs. SUKAMANI DAS case, referred supra.

14. With regard to the observation of the Apex Court in M.P. ELECTRICITY BOARD Vs. SHAIL KUMARI & OTHERS, referred supra, cited by Mr.V. Prakash, learned counsel for the petitioner, I could only observe that the said decision arises out of a suit laid for compensation but not in a matter where the powers under Article 226 of the Constitution of India were exercised.

15. For the aforesaid reasons, and in view of the well settled principles of law laid down by the Apex Court referred above, as the petitioner could get the relief before the competent Civil Court, on proving his case, it may not be proper for this Court to either entertain the above writ petition or grant relief as prayed for, based on disputed facts. Hence, the writ petition stands dismissed however, without prejudice to the right of the petitioner to approach the competent Civil Court for appropriate relief, explaining the pendency of the above writ petition before this Court as a reason for the delay in approaching the Civil Court, which the competent Civil Court will appreciate in proper perspective. No costs.

Index : Yes
Internet : Yes

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To:
1. Tamil Nadu Electricity Board
rep. By its Chairman
Anna Salai, Nandanam,
Chennai.
2. The Divisional Engineer
Tamil Nadu Electricity Board
Ponneri Taluk, M.G.R.District.